IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21662 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HASMUKH BARADI & 4 - Petitioner(s)
Versus
PRASAR BHARTI(BROADCASTING CORPORATION OF INDIA)THR' & 6 - Respondent(s)

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Appearance :
GIRISH PATEL ASSOC for Petitioner(s) : 1 - 5.
MR YN RAVANI for Respondent(s) : 1,
NANAVATI & NANAVATI for Respondent(s) : 1 - 3.
RULE SERVED for Respondent(s) : 3, 5,

RULE NOT RECD BACK for Respondent(s) : 4,
MR VIREN G DAVE for Respondent(s) : 5,
MR PR NANAVATI for Respondent(s) : 6,
MR KH BAXI for Respondent(s) : 7,
MR ROHIT S VERMA for Respondent(s) : 7,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/04/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for appropriate writ, order and/or directions declaring the decision of the respondent authorities i.e. Prasar Bharti (Broad Cast and Corporation of India) to allot the work to the private respondents for a Commissioned Programme for producing Telefilms on Indian Classics in Gujarati to the respondent Nos.5, 6 and 7.

2.It is also further prayed to direct the

respondent authorities to consider the cases of all the eligible persons on the basis of the relevant criteria and materials and objectives of the Act and take final decision for the allotment of the work. In the alternate, it is also prayed that if the work is already allotted and the contracts have been executed, to cancel the contract and restrain the authorities from taking further steps in terms of the contract.

3.It is the case on behalf of the petitioners that all the petitioners, five in number are the Directors / Producers of TV Programme and Telefilms who have won National / International Awards / Recognitions. It is the case on behalf of the petitioners that Prasar Bharti issued guidelines for Commissioned Programme for Telecast on Doordarshan Channel and by announcement by the Doordarshan Channel, bio-

data were invited from persons for producing telefilms on Gujarati Literary Classics on or around July, 2004. It is the case on behalf of the petitioners that all the petitioners sent their bio-data to the respondent authorities in time. All those applications were sent by Ahmedabad Doordarshan to Delhi Doordarshan and thereafter all these applications were sent by the Director General, Doordarshan to Ahmedabad Kendra for shortlisting those applications of persons who have worn National / International Awards. The Committee consisting of thee officers of the Doordarshan Kendra, Ahmedabad viz. Mr.Satish Saksena (DTO), Mr.Vinod Desai (ASD), Ms.Anila Shah (PEX Commissioned Programme) was appointed to shortlist the applications. The said Committee shortlisted 40 applications in Gujarati and 15 applications in Sindhi and were sent to Directorate, Delhi. It appears that a High Power Committee headed of

CEO, Prasar Bharti including Director General, Doordarshan, All India Radio and three members of the Board viz. Shri Bhupen Hazarika, Ms.Chitra Mudgal and Shri R.N. Bisaria made selection out of the shortlisted names and the short listed names were placed before the Prasar Bharti Board on 18/3/2005 and the selection was approved. It is the case on behalf of the petitioners that the petitioners did not hear anything about their applications for long and therefore, they sent telegram on 28/9/2005 and thereafter they have also sent the representation dtd.5/10/2005. Then they again sent letter dtd.17/10/2005 asking for information under the Right to Information Act and only thereafter, Ahmedabad Doordarshan sent reply dtd.18/10/2005 to the petitioners informing about the final selection. Thus, the petitioners were informed about the final decision only after 7 months from the approval

by the Board on 18/3/2005. Being aggrieved by and dissatisfied with the same, the petitioners have preferred the present petition for the aforesaid reliefs.

4.The impugned decision is challenged by the petitioners mainly on the following grounds;

(i) The decision making process (selection process) is arbitrary, irrational, unfair, unjustified and non-transparent.

(ii)Unjustified departure from and violation of the guidelines of the Prasar Bharti itself for commissioned programmes.

(iii)Defects in the composition of the Select or Expert Committee.

(iv)The final selection is based only on the

bio-data of the persons and no other materials vital for selection were called for. Thus, the decision is a result of non-application of mind resulting into ignoring the relevant considerations.

(v)Non-transparent criteria in absence of any criteria for final selection from amongst the persons who were eligible.

(vi)The Evaluation Committee did not follow the guidelines regarding marketing or benchmark and did not adopt rational criteria for final selection.

(vii)No reasons were given or communicated for not accepting the proposal.

(viii)The petitioner Nos.1, 3 and 5 were not considered at all only on the ground that

they were given small programmes for producing telefilms on short stories in classics in 2003.

(ix)The petitioner No.2 was not considered on the ground that he is a defaulter, without complying with the guidelines and without giving any opportunity to him.

5.Shri Girish Patel, learned senior advocate appearing on behalf of the petitioners has submitted that the petitioners have challenged the decision making process itself and not the result. It is also submitted by him that the petitioners are not challenging the credentiality of the of the private respondents Nos.5 to 7 in whose favour the assignments are awarded nor alleging any malafide on the part of the respondent Corporation. It is submitted by him that the

petition does not pertain to commercial contracts and the petition is in the field of airwaves which are declared by the Hon'ble Supreme Court of India as community resources of which the State is a public trustee and which must be used by the State only in the public interest and in a Constitutional matter. It is also further submitted that the petition also falls within the area of freedom of speech and expression under Article 19(1)(g) of the Constitution of India which includes both, freedom to communicate through any media and freedom of the petitioners to know. It is submitted that the petitioners are not claiming that they have a fundamental right to get the right of programme but what they are claiming is fair and equal treatment to all by following fair, just and reasonable procedure.

6.It is submitted that the petition falls in the

area of media and literature and compliance has to be struck between two principles viz. (i)principle of respect for evaluation by experts, and (ii) principle of preventing abuse of subjective judgment. It is further submitted that decision making process is in violation of the guidelines issued by the Prasar Bharti for commissioned programme. It is also further submitted by Mr.Patel that guidelines issued by Prasar Bharti cover both Producers / Directors who have generally made video / telefilms production programme, their career, particular with specialized training for this purpose in institutions like the FTII, SRFI and similar specialized institutions in the country and also those Producers / Directors who have won National / International awards in the area of video film production. According to him, on announcement on the Doordarshan by Prasar Bharti, proposals were invited from Producers /

Directors for producing telefilms on Gujarati Classics, along with the bio-data. According to him the announcement itself amount to invitation from Producers / Directors to send their bio-data for producing telefilms on Gujarati classics and it was not merely by way of information. Mr.Patel has submitted that the respondent also described the proposal as application and thus, it is incorrect to say that no applications were invited. It is submitted by him that thus, the announcement cannot be fitted in the claimed power of the Doordarshan to assign programmes under Clause 12 of the guidelines. It is submitted that by the aforesaid announcement, Doordarshan invited applications from the persons for the purpose of selection. Thus, the award of programme is not by assignment by selection amongst applicants. It is submitted that the announcement was for proposals from Producers /

Directors with bio-datas only and no other materials were called for at any stage to make final selection.

7.He has also further submitted that shortlisting of the applications was directed by the Director General to be made at Ahmedabad Center and local committee consisting of Mr.Satish Saxena, Mr.Vinod desai and Ms.Anila Shah shortlisted 40 Gujarati and 15 Sindhi proposals out of 112 Gujarati and 17 Sindhi proposal and all the aforesaid 3 members of the committee are the officers of the Doordarshan Center, Ahmedabad and no outside expert was included in the committee as in the past. It is also further submitted that the process of shortlisting done by the local committee was not as per the guidelines. It is also further submitted that the shortlisting is not purely a mechanical exercise but essentially an

evaluative process which really requires the participation of independent outside experts. It is submitted that in the past shortlisting committee did include outside expert. It is also further submitted that on what basis the short listing was made is not disclosed or declared.

8.It is submitted that the Evaluation Committee at the Center chaired by the CEO included the Director General, Doordarshan, Director General, AIR and 3 members members of the Board viz. Shri Bhupen Hazarika, Ms.Chitra Mudgal, Shri R.M. Bisariya. This Evaluation Committee consists only of the members of the Prasar Bharti Board as under the Act and even the 3 experts are part time members of the Board itself. It is also submitted that as per clause 21(i) of the guidelines, the Evaluation Committee must include (1) Additional Director

General / Dy.Director General, (2) Dy.Director General (Sales and Marketing) (3) Additional Director General / Dy.Director General of other channels, (4) Director of Programme (5) director of Programme of concerned channel and (6) 3 outside experts of repute from the fields of production performing arts, broadcasting, journalism and literature. For selecting these outside experts, a panel of 15 persons is to be nominated by the committee consisting of CEO, Member (Finance) and Director General, Doordarshan. This Evaluation committee consisted only of the members of the Board of the Prasar Bharti as per Clause 5 of sec.3 of the Act. The 3 members named are part-time members of the Board and thus, part of the Board itself. According to him, this is not as per the guidelines which requires outside experts as mentioned above and thus, the evaluation committee in question was really

inferior to the committee envisaged by the guidelines which provides for an independent evaluation by outside experts. It is also further submitted that though in the reply it is stated that the final selection was made on the basis of competitive merits of various procedures and for assessing merits guidelines were not followed and how the competitive merits were evaluated is not disclosed or declared or shown. It is also submitted that as the selection was made on the basis of competitive merits of various procedures, which clearly shows that awarding of the programme was not by assignment as claimed by the Doordarshan under Clause 12, but was by way of selection on competitive merits of various producers. It is submitted that when all the applicants and shortlisted persons have won National / International Awards / recognition and/or all were equal and therefore, from

amongst these persons how the selection was made, is not declared or disclosed. According to Mr.Patel, the eligibility criteria itself cannot be the test for final selection. It is submitted that when all the shortlisted applicants belong to the same cadre, there must be some criteria for selection from amongst the persons belonging to same class. The contention on behalf of the petitioners is that out of 40 shortlisted eminent Producers / Directors how and on what basis final selection was made? It is submitted that the final selection is based only on the basis of bio-data and not on any other materials. It is submitted that no final decision can be made on this consideration alone because bio-data will always reflect personal assessment of the applicants and to select persons it is necessary to call for other records or materials in order to find out the perspective, approach, focus or angles of

the particular proposals in dealing with the classic which is already selected. It is submitted by him that for selecting the best person, mere bio-data would not be sufficient or adequate because a classic can be dealt with or handled by different Producers / Directors in different ways.

9.It is also further submitted that even though required by the guidelines, no reasons are communicated to the persons for not accepting or selecting him. If the reasons are required to be noted, it must be strictly complied with. Clause 34 of the guidelines provides for re-consideration of the proposal once rejected and unless and until the decision is communicated and the reasons are communicated, it is extremely difficult for a person to avail of the remedy. Thus, according to Mr.Patel, in the present case, by not communicating final

decision for long and by not disclosing the reasons, the remedy available to the petitioners under clause 34 is set at naught.

10.It is also submitted by Mr.Patel that so far as the petitioner Nos.1, 3 and 5 are concerned, they are completely eliminated and excluded even from the zone of consideration only on the ground that they had produced programme under Indian Classics earlier and this consideration was never mentioned in the announcement. It is further submitted that this was never disclosed at any time. It is submitted that earlier award of work cannot be put forward as an excuse for excluding these people for a different bigger programme. Thus, the exclusion of the aforesaid three persons on this ground is totally arbitrary and irrational, as no such criteria was declared earlier in the announcement or disclosed at any time and it is not known by

whom and at which level this criteria was adopted. If the earlier performance is bad, a person can be excluded but simply because a person was given programmes earlier, he cannot be excluded and the same cannot be rational criterion for excluding from future programmes. It is submitted that they were given programmes because they were good and no selection process can be rational if it exclude persons who awarded such programme on the ground of their standing. Therefore, it is submitted that exclusion of the said 3 persons from consideration whatsoever at the outset defeats the very purpose of selecting best person for such classics.

11.So far as the petitioner No.2 is concerned, it is submitted that he was excluded on the ground that he was a defaulter in the past. It is submitted that the said ground is absolutely

illegal and impermissible because the guidelines clearly provides for an opportunity to such defaulter to clear its dues or get the repayment plan approved before final assignment of work. It is submitted that in the present case, the petitioner no.2 was never given any such opportunity and is totally excluded from the zone of consideration. He has relied upon Clause 8(iii) of the guidelines. It is submitted that no such opportunity is given to the petitioner no.2 nor was informed about his exclusion on this ground, except in the affidavit in reply. It is, therefore, submitted that this departure from the guidelines and fair consideration without any justifiable and rational reasons, vitiates the entire selection process. It is, therefore, submitted that the decision making process in selecting Producers / Directors for the Commissioned programme is vitiated in all respects. viz.;

(i) The petitioners Nos.1, 2, 3 and 5 who were eligible were completely excluded from the consideration at the outset on the totally irrational and arbitrary grounds not permissible under Article 14 of the Constitution of India.

(ii) The Evaluation Committee was wrongly constituted in valuation of the guidelines.

(iii) The decision is based only on the bio-data and on no other material and thus, it resulted into non-consideration of many relevant considerations other than the bio-data only.

(iv)The criteria for shortlisting as well as for final selection were never made known or

declared. The criterion pointed by the Doordarshan authorities in their affidavit in reply states that the criterion is eminent Producer / Director who has won National / International Awards but this is the eligibility criterion and all 40 persons shortlisted were eligible on this basis and therefore, some other criteria are required to be applied for selecting from amongst these persons.

(v)No marking or benchmark procedure was adopted with the result that it is not known how the various proposals were evaluated.

12.To meet with the stand taken by the respondent in the Affidavit-in-reply that they have invoked clause 12 of the guidelines, it is submitted that it is nothing but an afterthought and by way of rationalization of decision otherwise vitiated. It is submitted

that the guidelines do not make any distinction between the assignment of project on the basis of clause 12. It is submitted that the announcement by the Doordarshan inviting proposals was in fact and in law an invitation for application for commissioned project for producing telefilms on Indian Classics in Gujarati. It is submitted that to invoke clause 12 is only an excuse for covering up its illegalities. It is also submitted that the procedure followed by the Doordarshan in the present case viz. Inviting proposals and shortlisting, valuation etc. is not consistent with the super power of Doordarshan to select eminent person for certain production. It is submitted that inviting proposal for a programme and to assess the programme are two different things and both cannot go together. It is submitted that once proposals have come from the eminent producers / directors who have

won national / international award, in the present case, a rational selection has to be made on the basis of just, fair and reasonable consideration. It is submitted that clause 12 cannot confer any unfaterred discretionary powers upon the Corporation nor does it give any power to adopt pick and choose policy to select any person. Consequently, it is requested to allow the present petition and grant the reliefs as prayed for.

13.Per contra, while opposing the present petition, Mr.Nanavati,learned advocate appearing on behalf of the respondent Prasar Bharti has submitted that the selection of procedure is strictly followed in accordance with Commissioned Programme Guidelines and these guidelines are unilaterally and constantly followed by them. It is the submission on behalf of the respondents that

they have invoked Clause 12 of the Guidelines which reserves the right of Doordarshan to commission programme by assignment to eminent procedures and directors in the country who have national and international recognition / award. It is further submitted that during 2005-2006 Doordarshan will be producing nearly 800 half an hour episodes in 15 languages on Indian Classics. It is also further submitted that the work of eminent authors under “Indian Classics Series” have been selected by the Core Committee under the Chairmanship of Ms.Chitra Mudgal, Member Prasar Bharti Board. It is submitted that the Core Committee met at different places along with language experts and short listed the Classic work from 22 languages and the Core Committee also took into consideration Sahitya Academy winning books and Gnanpith award winning authors besides other eminent classics. It is further submitted that

the selection of this particular case was for the commissioning production of serial on Indian Classics in Gujarati Language and having regard to the very nature of the subject i.e. Indian Classics, it was decided that the same should be handled by the eminent producers and directors who have won the national and international recognitions / awards. It is the contention of the respondents that the Commissioning on Indian Classics cannot be treated at par with the commissioning of other ordinary programmes / materials. Therefore, in terms of Clause 12 of the "Commissioned Programmes" Guidelines, it was decided that the programme would only be assigned to eminent producers and directors in the country and who have won national and international recognition / awards. It is further submitted that bio-datas were invited from the producers who have won national and international recognitions /

awards and in response to the invitation total 129 bio-datas were received including 112 bio-data in Gujarati and 17 bio-datas in Sindhi by Ahmedabad Doordarshan Kendra. Thereafter, a committee consisted of (i) Satish Saxena (DTD), (ii) Mr.Vinod Desai (ASD.Comm.Prog), and (iii) Mrs.Anila Shah (PEX Com.Programme) short listed the bio-datas of 40 Gujarati and 15 Sindhi eminent and award winning producers and directors, and list was prepared and sent to the Director, Prasar Bharti, New Delhi and the names of petitioner Nos.1, 3, 4 and 5 were included in the said list at Sr.Nos.2, 25, 33 and 34 and the name of the petitioner NO.2 was not included as he was a defaulter. It is further submitted that the Prasar Bharti Board in its 65th meeting held on 18th March, 2005 had approved the list of producers for commissioning of programmes in Indian Classics in various languages and the Board had also

constituted an Empowered Committee consisting of CEO, DG, Doordarshan. Smt.Chitra Mudgal, Shri R.N. Bisaria, Mr.Bhupen Hazarika, Members Prasar Bharti Board to assign subjects to the shortlisted producers and the Empowered Committee met on 19th April, 2005 and considered the subjects selected by an earlier committee under the Chairmanship of Smt Chitra Mudgal as well as the list of producers approved by the Prasar Bharti Board in its 65th Meeting and after detailed discussions, the committee decided to assign the subjects language-wise. It is further submitted that the eminent award winning producers assigned programmes under the scheme are Mr.Shyam Bengal, Mr.Girish Karnad, Mr.Amol Palekar, Mr.Jaspal Bhatti, Ms.Kamini Kaushal, Ms.Suhasini Mulayah, Ms.Preeti Sapru, Ms.Kalpana Lazmi etc. It is further submitted that the Doordarshan is also producing 126 episodes of In-house programmes on Indian

Classics from 23 Regional Kendras.

14.It is further submitted by Mr.Nanavati that at the time of initial selection and the final selection, the criteria applied was that the concerned person should be an eminent producer / director having won national or international recognition / awards and capable of giving best expression of Indian Classics. It is further submitted that the criteria adopted is reasonable, uniform and rational and the persons who have been selected meet the required criteria. It is further submitted that due to limited availability of the funds, as a matter of policy, it was decided to select three producers in each language except Jammu & Kashmir and North East, for production of programmes under the Indian Classics and this criteria has been followed in all languages throughout the country. It is further submitted

that the Central Government has sanctioned grant for the programmes under Indian Classics for the current financial year which is ending on 31st March, 2006 and the grant is likely to get lapsed and even it would be difficult for the producers to prepare the programmes within a short period. It is further submitted that the respondent No.1 issued sanction letter dtd.14/9/2005 in favour of private respondents and it was stated in the said sanction letter that the Doordarshan Kendra, Ahmedabad will enter into an agreement with the producer as per the procedure prescribed in the Guidelines for the outside producers after satisfying himself of the fulfillment of the conditions mentioned in the agreement to be entered into with the producer. It is further submitted that pursuant to the sanction issued by Prasar Bharti, agreements came to be entered into with the private respondent Nos.5 to 7 on 5/12/2005,

7/12/2005 and 8/12/2005 respectively and as per the terms and conditions of the said agreement, they have also submitted their scripts and the Reviewing Committee has approved the same. Thus, it is submitted that the agreements with the respondent Nos.5 to 7 are already executed and they have also commenced necessary episodes / serials related work. It is also further submitted that the respondent Nos.1 to 3 are required to complete the production relating to Programmes under the Indian Classics before 31/3/2006 and if the production is not completed before 31/3/2006 the grant available from the Central Government will lapse.

15.Mr.Nanavati, learned advocate has relied upon the judgement of this Court in the case of Bhim Vakanki Vs.Union of India & Ors., reported in 1998 (2) GLH 700 and two judgements of the Hon'ble Supreme Court in the case of Tata

Cellulars Vs. Union of India, reported in (1994) 6 SCC 651 and in the case of Balco Employees's Union (Reg). Vs. Union of India & Ors., reported in (2002) 2 SCC 333. Relying upon the aforesaid judgements, Mr.Nanavati has submitted that while dealing with the limits of Judicial Review of the High Court under Article 226, while considering the evaluation of TV Serial by experts, it is held that the Judicial Review of administrative action on merits is impermissible in exercise of the High Court's extraordinary jurisdiction under Article 226 of the Constitution of India in absence of allegation of bias or malafide. Thus, the sum and substance of the arguments made on behalf of the respondents is that they have assigned the programmes on Indian Classics in Gujarati Language invoking clause 12 of the guidelines framed by Prasar Bharti Board and the said policy has been implemented in awarding the

programme on Indian Classics in entire country unilaterally. Submitting accordingly, he has prayed to dismiss the present petition.

16.The private respondents have filed their reply and have submitted that the contracts in their favour have already come into existence and they have already started their work and have also engaged persons and incurred huge expenses in production of programme as they are required to complete their programme on or before 31/3/2006.

17.Heard the learned advocates appearing on behlaf of the parties. Prasar Bharti (Broadcasting Corporation of India) has framed guidelines for commissioning of programmes in Doordarshan (page 59 to 62). As per the said guidelines, Doordarshan is required to assess its requirement of Commissioned programme for

the ensuing year, in the last quarter of the financial year and prepare a list of the same. The programmes are to be considered for commissioning to supplement and compliment In-House production efforts and to bring variety in programming. Proposals from eminent film directors of proven credentials are required to be considered on themes, which are required for telecast on DD Channels and these will be from film makers who have won national or international awards, film makers which proven credentials and considerable experience as Directors, Technicians, Writers, Researchers, etc.

18.The relevant guidelines read as follows;

(2) Commissioning of programmes through outside producers will be done for Doordarshan both at its headquarters and its Regional Kendras,

subject to the availability of funds from time to time.

(3) The requirement of commissioned programmes for Doordarshan would vary from year to year. It is proposed to keep a list of programmes identified to be required by us for the next two years to begin with. While identifying such special areas of progrmme production, Doordarshan would keep its achival record too in mind to avoid any duplication. Decision of Doordarshan in this regard shall be final. Doordarshan shall in accordance with its programme requirements invite proposals by making suitable announcements over its Network by putting the advertisement on website, by putting the notices on Notice Board

of Doordarshan Kendras and if required, also by inserting the advertisements in newspapers. It must be ensured that a minimum of two proposals are received for each genre so as to get the best quality at competitive cost.

(4) While Doordarshan would not take the responsibility to make available to the prospective applicants the exhaustive list of commissioned and in house programmes already available with Doordarshan, applicants are advised to ascertain the same from the respective Kendras / headquarters to avoid duplication of programme production. It will be the endeavour of Doordarshan to make such list available to the extent possible at the Kendras as well as headquarters

and through our Website. Such a list can only be illustrative and not exhaustive.

(5) The proposal for commissioning should essentially contain the following subject, title, language and theme/category/genre (e.g. Fiction, Documentary/Quiz,etc.) Detailed story line in case of serials. Break up of the story/topic and broad outline of treatment for single episode programmes. Synopsis of each episode, in cases of serials with scenario script for four episodes. Details of creative team including names, bio-data and address of the Director, Researcher, script writer, director of photography and music director, along with a written confirmation from each

one, agreeing to be engaged for the production of the programme. The producer shall also furnish full bio-data and show feel. In respect of himself/herself while making the application. No change in the production team, once intimated, shall be made without the prior consent of Doordarshan. Either a pilot of the programme or the tape of a programme already produced by the producer for production of quicker, spots, etc,, the same details would be furnished along with a complete story-board and details of post production Format will be Beta SP/Digi Beta/Film (16/35 mm)

(6) The proposals for commissioning are required to be submitted in two parts, one relating to the script, the

content, the concept, etc. at lest for four episodes, if it is a serial programme of 13 episodes or one episode if it is a non serial programme. The second part would consist of the cost of the production as envisaged by the applicant containing the full details of budget break up at pre-production, production and post production stages and will be taken up for examination only after the acceptance of first part containing the script, the concept, the content, etc. These two parts shall be submitted in separate sealed covers within another sealed cover. The proposal for commissioned programmes could be for a minimum of 13 episodes or appropriate number of episodes decided by mutual agreement.

(7) Prospective applicants are advised to avoid submitting proposals in the genre of daily soaps, sitcoms, that show, talk show etc. Doordarshan would not normally entertain proposals in such categories for which already there is a large number of proposals pending with Doordarshan in the sponsored category.

(8)(i) It is necessary for the prospective applicants to be personally present with their team whenever required for presentation of their proposals at any stage of their processing. It will be the endeavor of Doordarshan to give an opportunity to every prospective applicant for the presentation before his/her proposal is accepted/rejected.

(ii) If felt necessary by Doordarshan, an applicant should produce relevant documents such as income tax returns, partnership agreements, memorandum of association, articles of association, audited balance-sheet etc. in order to prove the authenticity of the Company, partnership/firm of the Producer.

(iii) Any producer who has any dues outstanding against him will either have to clear the dues or get the repayment plan approved before being awarded any assignment.

(9) Applicants who express the intention to utilize the infrastructure available with Doordarshan as per DD's rate card, wherever feasible, would be encouraged.

(10) Doordarshan will be at liberty to appoint an executive Producer wherever felt necessary to monitor and direct the production of the programme.

(11) In case the applicants want an arrangement where 50% of the approved episodes in serials would be commissioned by Doordarshan and rest of the 50% will be sponsored by the applicant, Doordarshan may consider such cases. This intention should be expressed well in advance at the time of application. Such an arrangement can be decided by Doordarshan also in case of some Producers who have already established a brand name, etc. on any television channel by telecasting programmes of at least 200 hours with

an average TRP of 4+.

(12) Doordarshan reserve the right to commission programmes by assignment to eminent producer and directors in the country who have won national and international recognition / awards.

19. Relying upon the aforesaid guidelines, Shri Girish Patel, learned senior advocate appearing on behalf of the petitioners has submitted that the actions of the respondents in not considering the petitioner No.2 on the ground that he is a defaulter, is absolutely illegal and arbitrary, as according to Shri Patel, as per guideline No.8(iii) any producer who has any dues outstanding against him will either have to clear the dues or get the repayment plan approved before being awarded any assignment. Shri Patel has submitted that

therefore, the aforesaid question will come only after the assignment is awarded and the petitioner No.2 was required to be given an opportunity to clear the dues or submit repayment schedule, which is not given. It is also the contention on behalf of the petitioners that so far as the petitioner Nos.1, 3 and 5 are concerned, their cases are not considered for commissioning the programme in view of the decision taken by the Committee not to repeat the Producers who have produced programmes under the Indian Classics in the last year. It is submitted that even the same is also illegal and arbitrary. It is also the contention on behalf of Mr.Patel that apart from all these, none of the petitioners are informed and/or the respondents have not assigned any reason for not accepting their proposals and thereby they have lost their right of an appeal as envisaged under guideline

No.34 against which it is the contention on behalf of the respondents that they have invoked guideline NO.12 and they have awarded the commissioned programme by assignment who are the eminent Producers and Directors in the country and who have won national and international recognition / awards. It is the contention on behalf of the petitioners that the contention raised by the respondents that they have invoked guideline No.12 is nothing but an afterthought, otherwise, they would not have invited bio-datas and other procedure would not have been followed.

20.It is required to be noted that the dispute is with regard to the awarding of commissioning programme for production of programme on Indian Classics in Gujarati Language and it appears that the bio-datas were invited from the producers who have won national and

international recognition / awards. It is not in dispute that all the petitioners have won national and international recognition / awards. Similarly, the private respondent Nos.5 to 7 have also won the national and international recognition / awards. It appears from the record that total 129 bio-datas, 112 bio-datas in Gujarati and 17 bio-datas in Sindhi were received by Ahmedabad Doordarshan Kendra and the after short listing the bio-datas of 40 Gujarati and 15 Sindhi eminent and award winning producers and directors, their list was prepared and sent to Director General, Prasar Bharti, New Delhi wherein according to the respondents, the name of the petitioner Nos.1, 3 and 5 were also included. However, the name of the petitioner No.2 was not included as according to them, he was a defaulter. Thereafter, the Empowered Committee constituted by Prasar Bharti Board selected

respondent Nos.5 to 7 and decided to assign Commissioned Programme for production of film of on Indian Classics. At this stage, it is required to be noted and fairly conceded by Mr.Patel, learned senior advocate appearing on behalf of the petitioners that the petitioners are not alleging any malafide and at the same time, the petitioners are also not making any comments against the Members of Prasar Bharti Board and/or the Empowered Committee who have selected and on the basis of whose report, the Prasar Bharti decided to assign the Commissioned Programme to the private respondent Nos.5 to 7. It is required to be noted that the petitioners have also submitted that they are also not alleging that the respondent Nos.5 to 7 are not fulfilling the criteria and/or are not eligible. However, the only submission and contention made on behalf of the petitioners is that while awarding

and/or assigning the Commissioned Programme for production of Telefilms in Indian Classics in Gujarati language in favour of the respondent Nos.5 to 7, the Prasar Bharti Board has not followed the guidelines for awarding / assigning Commissioned Programme.

21.It is required to be noted that while awarding / assigning the commissioned programme, the respondent Prasar Bharti Board is required to follow certain guidelines and the procedure is required to be followed and the respondents are required to assign reasons and inform the applicants for not accepting their proposal for assignment of commissioned programme, as even as per guideline No.34, within one month of that intimation, the applicant can prefer an appeal against the rejection of their proposal. In the present case, admittedly, neither such reasons have been assigned nor the applicants

have been communicated the decision of the Prasar Bharti Board for not accepting their proposal and thereby the petitioners are deprived of their right to prefer an appeal as envisaged ender guideline No.34. It is also required to be noted and it is an admitted position that the proposal submitted by the petitioner No.2 has never been considered, as according to the Prasar Bharti, he was a defaulter. If one considers guideline No.8(iii) any producer who has any dues outstanding against him will either have to clear the dues or get the repayment plan approved before being awarded any assignment. Thus, the proposal of the said producer who has any dues outstanding against him is required to be considered, but at the time of assignment of the commissioned programme he is required to be given an opportunity either to clear the dues or get re-payment plan approved before being awarded any

assignment. Thus, the actions of the respondent in not considering the case of the petitioner No.2 is contrary to the guidelines for awarding of assignment of Commissioned Programme.

22.At this stage, it is required to be noted that it is the contention on behalf of Prasar Bharti Board that they have invoked clause 12. However, it is required to be noted that it is not in dispute that Prasar Bharti is having right to commissioned programme by assignment to eminent Producers and Directors in the country who have won national and international recognition / awards. However, the said powers cannot be exercised unilaterally and without following any procedure as required under the guidelines. Even if clause 12 is invoked, in that case also, the applicants are required to be informed with regard to their rejection of their proposal so that they can prefer an

appeal as envisaged under guideline No.34. It is true that against the decision of an expert body selecting TV Serial and/or assignment of Commissioned Programme more particularly specialised Commissioned Programme for TV Serial on Indian Classics, this Court would not like to interfere with such decision in ordinary courses as this court would have very limited jurisdiction. However, at the same time the Court can consider whether the proper procedure and guidelines have been followed or not.

23.In the present case, it appears that the Prasar Bharti has not followed the guidelines for assignment of Commissioned Programme strictly inasmuch as none of the applicants are communicated the reasons for not accepting their proposal and thereby they are deprived of their right to prefer an appeal against the

rejection of their proposal as envisaged under guideline No.34 and that the proposal submitted by the petitioner No.2 is wrongly not considered.

24.It is required to be noted at this stage that so far as the assignments in question are concerned, agreements are already entered into between the Doordarshan Kendra and respondent Nos.5 to 7, part payment is already made, the respondent Nos.5 to 7 have already incurred expenses and employed men-powers and they are required to complete the programme and submit the same on or before 31/3/2006, as the grant sanctioned by the Central Government is to be utilised on or before 31/3/2006, otherwise, it would be lapsed. Therefore, the question which is required to be considered by this Court is that what relief the petitioners are entitled to inspite of the fact that this Court has

found that there is substance in the contentions made on behalf of the petitioners with regard to non-compliance of the guidelines issued for assignment of Commissioned Programme. Still, considering the aforesaid facts and circumstances and though it cannot be said that the petitioners have approached belatedly, as, as soon as they came to know about the assignment of the Commissioned Programme to the respondent Nos.5 to 7, they have immediately preferred the present petition. Still as the agreements have already been entered into and respondent Nos.5 to 7 who are assigned the Commissioned Programme have already incurred expenses and started producing telefilms on Indian Classics, are already paid part payment, the grant sanctioned by the Central Government is to be utilised on or before 31/3/2006, it will not be proper for this Court at this stage to interfere with the

impugned decision and upset the entire things as, in doing so, not only the Prasar Bharti but even the respondent Nos.5 to 7 will also put to a huge financial loss. However, the following directions are required to be issued so that while considering the proposal for assignments of Commissioned Programme in future, the Prasar Bharti and the respondents authority shall consider and follow the same ;

(1)The Prasar Bharti shall follow the guidelines for consideration on processing and approval of Commissioned Programme for telecasting on Doordarshan Channel strictly even while exercising powers under guideline No.12.

(2)The Evaluation Committee shall be comprising of the members as envisaged under Guideline No.20, 21, 22 and 23.

(3)As soon as the final decision is taken on

assignment of Commissioned Programme, each of the applicants / Producers will have to be intimated the decisions with regard to selecting the proposal of assignment of Commissioned Programme and/or the decision for not accepting the proposal, so that the the said Producer can prefer an appeal within a period of one month from the date of such intimation to the Director General, Doordarshan for re-consideration of their proposal as envisaged under guidelines No.34. If any other policy is taken such as in the present case not to consider the case of those producers who were awarded the assignment in the last year, then each of the producers will have to be informed accordingly at the time of inviting bio-data so that the said producer can know such policy in advance.

(4)The Prasar Bharti shall follow the

guidelines as stated above inclusive of giving an opportunity to any Producer who has any dues outstanding against him either to clear the dues or to submit repayment plan to be approved before being awarded any assignment. Meaning thereby, the proposals of those Producers are required to be considered but before actual assignment, the aforesaid opportunity is required to be given.

(5)The aforesaid procedure is required to be followed even while exercising the powers under clause 12 also.

25.For the reasons, observations and directions as stated hereinabove, without quashing and setting aside the assignment, the impugned decision of the Prasar Bharti to assign the Commissioned Programme in favour of the respondent Nos.5 to 7, the present petition

stands disposed of. However, there will be no order as to costs.

(M.R.SHAH,J.)

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